THE HONOURABLE SRI JUSTICE R. SUBHASH REDDY

WRIT PETITION No. 15322 OF 2000:

ORDER:

This Writ Petition is filed questioning the orders dated 20-6-1999 in S.R.No. 435/98, passed by the Special Deputy Collector, Tribal Welfare, K.R. Puram, West Godavari District, second respondent herein, ordering eviction of the petitioner from the land in R.S.No. 83, admeasuring Ac.1.50 cents, situated in Lakshmudugudem village, Buttaigudem Mandal, in West Godavari District, in exercise of powers conferred under Section 3(2) (a) of the A.P. Scheduled Areas Land Transfer Regulation 1 of 1959, (for short 'the Regulations'), as amended by Regulation 1 of 1970.

The petitioner is the owner and possessor of an extent of Ac.1.50 cents of land in Sy.No. 83 of Lakshmudugudem village, Buttaigudem Mandal, in West Godavari District. She claims to have purchased the said land from non-tribal in the year 1968, i.e. on 25-12-1968, through an agreement of sale, followed by transfer, and, since then, she is in continuous and uninterrupted possession of the said land. Based on a complaint filed by the Special Deputy Tahilsdar, Tribal Welfare, No.1, Eluru, proceedings were initiated by the Special Deputy Collector, Tribal Welfare, Eluru, and, show cause notice was issued to the petitioner, to show cause, as to why she should not be evicted from the land in question, on the ground that the transfer, which was made, is in contravention of the A.P. Scheduled Areas Land Transfer Regulation 1 of 1959, as amended by Regulation 1 of 1970. In the said proceedings, the petitioner had taken defence to the effect that she had purchased the said land from non-tribal, in the year 1968, which is prior to the Regulation came into force. In the enquiry, she has produced documentary evidence under Exs. B1 to B4. Basing on the evidence of the petitioner, particularly evidence under Ex.B2--Sale agreement dt. 25-12-1968 and Ex.B3-cist receipt dt.25-12-1968, proceedings initiated for eviction in S.R.No. 168/81 were dropped,, by passing the order dated 29-05-1982. There is no dispute that the said order became final.

Though the said order became final, based on complaint of the very same officer, i.e. Special Deputy Tahsildar, Tribal Welfare, No.1, Eluru, again eviction proceedings were initiated against the petitioner in S.R.No. 435/98, with regard to the very same land, on the very same allegation, which was enquired into earlier. Though it was the case of the petitioner that she was not served with notice, but, the impugned order is passed, on the premise that in spite of service of notice, the petitioner did not respond to the same, by recording the finding that the transfer is in contravention of the provision under Section 3(1) (a) of the regulation 1/59, as amended by Regulation 1/70.

Mainly this Writ Petition is filed on the ground that in the earlier order dated 29-5-1982, a finding was recorded to the effect that the petitioner had purchased the said land prior to the Regulation came into force; as such, the same is not hit by Regulation. It is submitted by the learned Counsel for the petitioner, that it is not open for the respondents, now, again to pass the impugned order on the very same allegation, in respect of the very same land. It is further submitted by the learned Counsel, that the impugned order is passed without notice to the petitioner. It is the case of the learned Counsel, that there is no power of review under the Regulation and if the impugned order is allowed to stand, it amounts to review of the earlier order. In support of his contentions, the learned Counsel has placed reliance on the judgment of the Full Bench of this Court in the case of *Gaddam Narsa Reddy Vs. Collector, Adilabad District*, on the judgment of the Division Bench of this Court in the case of *Chintalapati Ramalinga Raju Vs. District Collector, WG Dist* , and, on the judgment of the learned Single Judge of this Court in the case of *Mallina Venkatarao Vs. District Collector, W.G. District.*

Though no counter affidavit is filed on behalf of the respondents, but, on instructions, it is submitted by the learned Government Pleader appearing for the respondents, that the earlier order was passed in the year 1982, and subsequently, additional material is found, so as to declare the transfer as illegal; as such, it is always open for the respondents to initiate proceedings for eviction. It is further submitted that in spite of service of notice, the petitioner did not respond to the same, in that view of the matter, the impugned order came to be passed.

With reference to the above submissions, in this case, it is to be seen, it is not in dispute that, earlier, the proceedings were initiated in the year 1982. In the said proceedings, it was the specific case of the petitioner that she had purchased the land in question from non-tribal through agreement of sale, coupled with possession, on 25-12-1968 and then onwards, she is in continuous and uninterrupted possession of the same. I have perused the order dated 29-5-1982 passed in S.R.No. 168/81, in which specific finding was recorded to the effect that the vendor admitted the agreement of sale, dated 25-12-1968, which was marked as Ex.B.2, and, the petitioner produced Ex.B.3 to show that she had paid the revenue for the said land on 25-12-1968. In that view of the matter, the proceedings were dropped, as the said transaction took place prior to the Regulation came into force, the same was not in contravention of the provision under Section 3 (1) (a) of the Regulation 1/59, as amended by Regulation 1/70. In the year 1998, again proceedings were initiated, on the complaint of transfer by the very same officer, in respect of the very same land, on the very same allegation, in spite of the earlier proceedings were closed and order dated 29-5-1982 passed in the said proceedings became final. It is the case of the petitioner that he was not served with notice. On the other hand, it is submitted by the learned Government Pleader that the petitioner did not respond, in spite of service of notice. But, the fact remains that the earlier proceedings initiated against the petitioner were dropped, by recording specific finding that the transfer was not hit by the provision under Section 3(1)(a) of the Regulation 1/59, as amended by Regulation 1/70. The '*transfer'* as defined in Section 2 (g) of the Regulation is to the following effect:

> *" 'Transfer' means mortgage with or without possession, lease, sale, gift, exchange or any other dealing with immovable property, not being a testamentary disposition and includes a charge on such property or a contract relating to such property, in respect of such mortgage, lease, sale, gift, exchange or other dealing*"

As per the definition referred to above, even a charge on such property or *contract relating to such property in respect of* mortgage, lease, *sale*, gift, exchange or other dealing is also transfer. In this case, the transfer, which was effected through agreement of sale, on 25-12-1968, was prior to Regulation came into force. This

transaction took place between non-tribals and prohibition came into force on 3-2-1970. The Full Bench of this Court in the case of *Gaddan Nara Reddy* (1 supra) held that the Regulation is not retrospective in operation. In that view of the matter, the transfer of land in favour of the petitioner is not hit by the Regulation. In any event, when the earlier order dated 29-5-1982 became final, there is no jurisdiction for the respondents herein to pass another order. More over, if the impugned order is allowed to stand, it amounts to review of the earlier order. It is also admitted, that there is no provision for reviewing the orders as per the scheme of this Regulation. It is also fairly well settled that in absence of an express provision, the power of review can not be exercised by any authority. For the foregoing reasons, the impugned order is liable to be set aside, and accordingly, the impugned order dated 20-6-1999 in S.R.No. 435/98, passed by the Special Deputy Collector, Tribal Welfare, K.R. Puram, West Godavari District is set aside.

The Writ Petition is allowed. No order as to costs.

JUSTICE R. SUBHASH REDDY

DATED: 30 -09 -2005.

Msnr.